

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALYSSA RADER and JOE
RADER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONALD RADER,

Respondent-Appellant.

UNPUBLISHED

January 15, 2008

No. 277918

Sanilac Circuit Court

Family Division

LC No. 06-034761-NA

Before: Kelly, P.J., and Cavanagh and O'Connell, J.J.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to both minor children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody), and to his son under subsection (h) (imprisonment and child will be deprived of normal home for two years), as well. We affirm.

I. Basic Facts and Proceedings

At the beginning of the proceedings, respondent had legal custody of his two minor children, a 16-year-old daughter, and an 8-year-old son. Respondent's daughter had been in his custody for three years, and his son had been in his custody since birth. When his son was an infant, respondent was prosecuted for indecent exposure. Neither child's mother was named as a respondent in the proceedings, and their parental rights were not terminated, but they were not deemed suitable placements for their children.

Police raided respondent's home twice, and over eight ounces of marijuana and paraphernalia were recovered. At the adjudication trial, respondent pleaded no contest to the following allegations: providing marijuana and alcohol to one of his daughter's underage friends, making comments about often seeing his daughter naked, consuming alcohol with his daughter and an underage friend, and emerging with his daughter from a room having a strong odor of marijuana. Respondent signed a parent-agency agreement, which required him to complete parenting classes and demonstrate improved parenting skills, visit the children weekly, attend individual therapy and substance abuse counseling, refrain from discussing his pending criminal case with the children, and complete drug and alcohol screens.

Petitioner provided respondent with referrals to various places for individual counseling, parenting classes, and substance abuse counseling. Respondent selected a provider that offered all the required services and scheduled an intake session. However, he never participated because he claimed he could not afford the fee for the intake session and he had undergone foot surgery. Respondent did attend most of his scheduled weekly visits with the children. However, he failed to abide by the rules, sometimes placing and receiving telephone calls during visits, arriving late for two visits, bringing a girlfriend to one visit, and speaking with the children about his criminal case. Respondent did not engage in services for two and a half months, and he pleaded no contest in criminal court to two counts of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a) (victim between 13 and 16 years of age), and one count of delivery of marijuana, MCL 333.7401(2)(d)(3). He was sentenced as a third habitual offender, MCL 769.11, on October 23, 2006, to two to eight years in prison, and placed on the Michigan Sex Offender Registry. Respondent did not take any action to provide for the children's alternate custody between the time he was convicted and the time he was incarcerated. Respondent's earliest release date from prison is October 21, 2008, at which time his daughter will be no longer be a minor. Since he was incarcerated, respondent has completed the first phase of a substance abuse program, and he testified that he is pursuing a general equivalency diploma. Respondent is also participating in the mandatory sex offenders program and attending alcoholics anonymous meetings in prison.

II. Clear and Convincing Evidence

Respondent argues that the trial court erred in terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (3)(h) because clear and convincing evidence was not presented. We disagree. We review for clear error a trial court's decision to terminate parental rights. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

A. Failure To Provide Proper Care and Custody

Respondent first argues that a misstatement of §19b(3)(g) in the supplemental termination petition warrants reversal. The petition erroneously stated that termination was "appropriate for the reason that the parent, without regard to intent and *having the ability to do so*, has failed to provide proper care or custody for the children. . . ." (Emphasis added.)¹ However, the record as a whole showed that respondent was aware of the allegations made against him and had an opportunity to respond to them, and the trial court relied upon a correct rendition of the subsection in making its termination decision.

Respondent contends that the trial court erred in determining that there was clear and convincing evidence that he had failed to provide the children with proper care and custody. The evidence showed that respondent condoned and facilitated the criminality of his daughter and her

¹ MCL 712A.19b(3)(g) provides that a trial court may terminate parental rights if it finds clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." It does not contain any reference to the parent's ability to provide proper care or custody.

underage friends, and he engaged in drug activity that resulted in the children witnessing two police raids on their home. Through the children's removal and respondent's incarceration, he caused the children's lack of custody, self-blame, and depression. Respondent had previous sexual deviancy and drug offenses, and his current criminal convictions indicated that he had not rehabilitated during the intervening ten years. Upon coming under criminal investigation, he failed to address the impropriety of his home environment and parenting. He did not arrange for the children's alternate custody despite the serious allegations against him, the police raids on his home in May and June 2006, and his imminent incarceration. While respondent cannot be faulted for not transferring custody to the children's unfit mothers, it was only upon the children's removal that he mentioned that his son should be placed with maternal grandparents. He offered no suggestions for his daughter's placement.

Given respondent's prior failure to rehabilitate and his failure to recognize and address the immediate need to improve his home environment and parenting, the evidence was clear and convincing that he would be unable to provide proper care for his son within a reasonable time even if he engaged in prison services, was released on the earliest possible date, and was not prohibited from contact with children. His incarceration caused his complete inability to parent his daughter during the remainder of her minority. The trial court did not err in basing termination of respondent's parental rights to both children on § 19b(3)(g).

B. Respondent's Incarceration

Respondent claims that the trial court erred in terminating his parental rights to his son pursuant to MCL 712A.19(3)(h). As noted by the trial court, respondent did not have a responsibility to provide a home for his daughter upon his release from prison because she would have reached the age of majority. The evidence showed that respondent failed to provide alternate custody for his son and there was no reasonable expectation that he would be able to provide proper care within a reasonable time. It also showed that his incarceration would deprive the child of a normal home life for more than two years.

The two-year period of incarceration referenced in subsection 19b(3)(h) begins on the date of the termination hearing, and it includes both the time the respondent is incarcerated and the time required for him to provide a proper home for the child. *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992); *In re Neal*, 163 Mich App 522, 527; 414 NW2d 916 (1987). The termination hearing began on February 1, 2007, and respondent's judgment of sentence showed that his earliest release date was October 21, 2008, which was 20 months after commencement of the termination hearing. That leaves respondent four months after his earliest possible release date to establish a proper home. Respondent asserts that he had no protective services referrals in the past, he had provided proper care for the children before his incarceration, and he would be able to do so immediately upon his release. However, the evidence clearly showed that, although respondent may have provided physical elements of care, his home environment was clearly unfit, and his criminality and incarceration left both children without the stability of a normal home.

Given respondent's failure to rehabilitate in the past, his lack of appreciation for the improper nature of the home environment he had created for the children, and the uncertainty of his release date and whether he would be allowed contact with children upon release, there was no reasonable expectation that he would be able to provide a normal home within two years of

the termination hearing. The trial court did not err in terminating respondent's parental rights to his son under §19b(3)(h).

III. Best Interests of the Children

Respondent contends that the evidence showed that termination was contrary to the best interests of the children pursuant to MCL 712A.19b(5). See *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We disagree.

The evidence did not show that termination of respondent's parental rights was clearly contrary to the children's best interests. Respondent's bond with his daughter was an unhealthy one. While respondent's son was strongly bonded to him, the evidence showed that respondent was a sex offender and habitual criminal who had never rehabilitated. Although termination of respondent's parental rights would negatively impact his son, his son had been progressing well in his grandparents' care since August 8, 2006. Disrupting that placement after two and a half, or possibly several more, years to allow respondent an uncertain opportunity to parent after his release from prison was not in the best interests of respondent's son. The evidence as a whole showed that termination of respondent's parental rights was not clearly contrary to either child's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell